

JOSEPH M. SCARPITTA
Claimant

EDWARD KRAEMER & SONS, INC.
Respondent

GREAT AMERICAN INSURANCE COMPANY
Insurance Carrier

Claimant suffered accidental injury on or about September 24, 1984. On April 22, 1985, Administrative Law Judge Howard, at a preliminary hearing, granted claimant's request for medical treatment, but denied claimant's request for temporary total disability

compensation. There was no noted activity after that date and, on July 21, 1987, Administrative Law Judge Howard dismissed the above matter from the active docket "subject to reinstatement for good cause shown."

On January 6, 1999, claimant mailed to respondent and the Court a Motion to Reinstate in the above matter, requesting that this case be placed back on the active docket. A preliminary hearing was scheduled for February 22, 1999, in front of Judge Sample. At that time, claimant did not appear in person, but instead, appeared through counsel. No testimony was taken and no evidence admitted. The only presentation to the Administrative Law Judge at that time were arguments of counsel.

Judge Sample properly noted that the present policy of the Division is to place matters on the inactive docket when no action has been taken for a period of nine months. She described this as a ministerial task and noted that reinstatement requires only that one of the parties request a setting. While the Administrative Law Judge discussed the good cause language contained in the original 1987 action, the Appeals Board finds no language in the statute or any regulation dealing with any good cause requirement for reinstatement.

The question presented to the Appeals Board is not whether good cause existed to reinstate, but whether reinstatement is a ministerial task or whether it is a judicial act which requires the presentation of evidence to and a judicial determination by the Administrative Law Judge.

The Appeals Board must, however, first decide whether this matter is properly before the Appeals Board for determination. K.S.A. 44-551 was amended by the Kansas Legislature in 1997. The pre-July 1, 1997, language allowed for a review by the Appeals Board of "[a]ll acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge"

That language was modified substantially by the Kansas Legislature in 1997 and now reads "[a]ll final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge shall be subject to review by the board"

The decision by Judge Sample in this instance does not constitute a final order, award, modification of award or preliminary award. It is instead an interlocutory order by an administrative law judge, issued during the litigation of a workers' compensation matter. The Appeals Board, therefore, finds that this matter is not properly before the Appeals Board under K.S.A. 1998 Supp. 44-551 at this time, and the appeal by the respondent should be dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Julie A. N. Sample dated March 12, 1999, remains in

full force and effect, and the appeal of the respondent from that Order should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of May 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Richard C. Wallace, Lenexa, KS
Donald J. Fritschie, Overland Park, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director